

JPA File No.: JPA 05-133 I
AG Contract No.: KR05-1300TRN
Project: Advance Traffic Interchange
Section: I-17/Dixileta Drive
TRACS No.: H 6178 01C / 01D
Budget Source Item No.: City Advance

119951 . 7

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF PHOENIX

THIS AGREEMENT is entered into this date November 9th, 2006, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF PHOENIX, acting by and through its CITY MANAGER (the "City").

I. DEFINITIONS

"Accelerated Schedule" means Accelerating the design, rights of way acquisition and construction elements of a new traffic interchange located at Dixileta Drive and Interstate 17 (I-17) (hereinafter referred to as the "Project"). Exhibit A attached hereto and made a part hereof depicts the acceleration schedule of the project.

"Agreement" means this intergovernmental agreement for the Project, as the same may be amended or supplemented from time to time.

"City" means the City of Phoenix, Arizona.

"City Advance" means those funds to be advanced by the City to the State, for the sole purpose of accelerating the Project from FY 2012 to FY 2007, for an estimated amount of \$11,900,000.00, as shown on Exhibit B, attached hereto and made a part hereof.

"City LGIP Account" means the interest bearing account established by the City with the State Treasurer's Local Government Investment Pool, containing monies funded by the City for the City Advance, Investment Interest, and any other funds provided by the City for the Project.

"Department" means the Arizona Department of Transportation.

"Investment Interest" means interest earnings resulting from the investment of the unused portion of the City Advance while such funds are held in the City LGIP Account. All such Investment Interest shall remain in the City LGIP Account and shall be applied to the construction costs of the Project or repaid to the City and for the benefit of the City, as set forth in this Agreement. Only interest to be paid is in accordance with said City LGIP Account.

NO. 28546
Filed with the Secretary of State
Date Filed: 11/9/06
Janice K. Shuman
Secretary of State
By: [Signature]

"LGIP" means the Local Government Investment Pool established with the State Treasurer's office.

"Parties" means the State and the City collectively.

"Party" means the State or the City as the case may be.

"Project" means the acceleration of a new traffic interchange (TI) located at Dixileta Drive and Interstate 17 (I-17), to applicable State standards and specifications.

"RTPFP" means the Regional Transportation Plan Freeway Program

"State" means the State of Arizona acting by and through the Department of Transportation.

"State's Fiscal Year" means the fiscal year, which begins on July 1st and ends on June 30th of the following year.

"State Program Funds" means the funding designated and approved by the Maricopa Association of Governments in the RTPFP of the projects (including the Project), programmed in FY 2012.

"State Transportation Board" or "Board" means the Transportation Board of the State organized pursuant to Arizona Revised Statutes, Sections 28-301 et. seq.

II. RECITALS

1. The State is empowered by Arizona Revised Statutes Section §28-401 and 28-7677 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State

2. The City is empowered by City Charter Chapter II, Section 2.i. to enter into this Agreement and has by ordinance, a copy of which is attached hereto and made a part hereof, ordained to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has identified \$11,900,000.00 of RTPFP funds in fiscal year (FY) 2012, for the design, rights of way acquisition and construction of the new traffic interchange at Dixileta Drive and I-17. The City hereby requests that the State accelerate this effort and agrees to advance the funding to accomplish same, collectively herein referred to as "the Project", at an estimated cost of \$11,900,000.00. The City will agree to provide or cause to be provided to the State, the City Advance at an estimated amount of \$11,900,000.00. Any changes to this amount will be with the written concurrence of the City for the Project herein.

4. The State will agree to accelerate the Project from FY 2012 to FY 2007 and will recommend to the State Transportation Board that the State reimburse the City for any funds expended on the Project with RTPFP funds on or after July 1, 2011. The State agrees to recommend to the State Transportation Board, the repayment of the funds drawn from the City LGIP Account, Investment Interest earned and any other funds provided by the City used for accelerating the Project.

5. The Parties hereto agree and acknowledge to the following conditions: **a)** the amounts referenced in this Agreement are subject to change; **b)** the estimated amounts may change substantially; and **c)** the Parties will perform their responsibilities consistent with this Agreement.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

III. SCOPE OF WORK

1. The State shall:

a. Upon execution of this Agreement, coordinate with the City for accelerating the design, rights of way acquisition and construction of the Project.

b. Assist the City with establishing a City LGIP Account with a deposit of \$11,900,000.00 for estimated costs of the Project, (including 14% construction engineering and administration), which shall be available to the State as required to pay monthly actual contractor payments of the Project. Interest on the City LGIP Account shall be for the benefit of the City, whether available to pay for Project costs or reimbursed upon completion of the Project.

c. Upon receipt of the City's initial deposit of \$11,900,000.00, retain and contract with professional design and environmental consultants (the "Consultant"), to prepare design documents and final environmental assessment (EA), including but not limited to Cultural Resource Surveys and studies and an Army Corps of Engineers Section 404 Permit.

d. Design the Project to State standards and provide the City with copies of the Project plans at 60% and 95% completion for review and comment. Incorporate the City's comments, as appropriate.

e. Administer the Consultant contract and make all payments to the Consultant. Confer with the City on any design and environmental Consultant related contract modifications.

f. Prepare the construction plans, specifications and such other documents and services necessary for advertising and construction of the Project to meet the Accelerated Schedule, shown on Exhibit A. Notify the City promptly in writing of any change in the Accelerated Schedule.

g. Prior to advertising for bids, provide the City with a construction cost estimate for the Project based on 100% complete plans.

h. Upon Bid opening, provide the City with the Project's bid amount and request the City's written concurrence prior to recommending award of the construction contract.

i. Upon the City's concurrence of the Project plans and estimated costs, and receipt of any additional City funds deemed necessary for deposit into the City LGIP Account, recommend approval to the State Transportation Board that it award one or more construction contracts for the Project. Use its best efforts to issue a notice of award to the contractor within fifteen (15) business days of award of the construction contract by the State Transportation Board.

j. Provide all coordination as required with Federal Highway Administration (FHWA) and other agencies affected in association with the Project, including required approvals as appropriate to the Project's efforts.

k. Administer the construction of the Project and make all payments to the contractor(s). Be responsible for any contractor claims for extra compensation due to delays or whatever reason, attributable to the State.

l. Draw down the City LGIP Account as necessary to make monthly contractor payments associated with the Project. Provide the City with a monthly report showing the progress of the Project draws against the City LGIP Account. Notify the City if additional funds are required as necessary for deposit into the City LGIP Account during the construction of the Project.

m. Agree that the amount deposited into the City LGIP Account, any Investment Interest earned on the balance in the City LGIP Account and any other funds provided by the City, will be used by the State solely to pay the costs of accelerating the Project described herein, per the estimated Accelerated Schedule as shown on Exhibit A.

n. Upon acceptance of the Project by the State and within 30-days of final accounting of the Project, unless otherwise agreed to by the City in writing, remit to the City any remaining balance of the City LGIP Account including, but not limited to, the City LGIP funds, any Investment Interest earned and any other funds provided by the City and used for the acceleration of construction of the Project.

o. Recommend approval by the State Transportation Board to program the actual amount of RTPFP funds for reimbursing the City on or after July 1, 2011, for accelerating the design and construction of the Project.

p. Upon approval by the State Transportation Board of the RTPFP funding and receipt of an invoice, remit to the City actual costs, currently estimated amount of \$11,900,000.00 for acceleration of the Project on or after July 1, 2011.

q. Upon completion of the Project, routine and emergency maintenance of said Project will be in accordance with JPA 90-019, attached hereto by reference.

2. The City shall:

a. Upon execution of this Agreement, coordinate with the State with accelerating the design, rights of way acquisition and construction of the Project. Authorize the State to be the sole signatory on said City LGIP Account.

b. With assistance from the State, establish the City LGIP Account with a deposit, and in an amount not to exceed \$11,900,000.00 without the prior written agreement of the City, in an investment portfolio/pool designated by the City, for accelerating the design, right of way acquisition and construction, (including 14% construction engineering and administration), which shall be available to the State as required to pay monthly actual contractor payments of the Project.

c. Review and provide written comments to the State at 60% and 95% completion within 10 business days of receipt of design documents. Be responsible for any design and environmental-related Consultant claims for extra compensation due to delays, or whatever reason, attributable to the City. Additionally, be responsible for post design services.

d. Within 5 business days from receipt of the construction cost estimate based on 100% complete plans, provide the State written concurrence of such construction cost estimate. Have the right to reject the construction cost estimate if the estimate is in excess of \$8,500,000.00 based on 100% plans, and shall communicate such rejection in writing within ten (10) business days of the City's receipt of such estimate. It is understood, if the City rejects the construction cost estimate, the construction of the Project will be completed by the State in accordance with the then-current RTPFP of programmed projects, and the remaining funds in the City LGIP Account will be returned to the City, including any interest accrued to date.

e. Upon Bid opening and within 5 business days of receipt of the Bid amount of the Project, provide the State written concurrence of such award amount.

f. During the construction of the Project, coordinate with the State regarding the balance of the City LGIP Account as actual Project costs are incurred, as indicated by the State's monthly progress

reports. Deposit additional funds required to pay the mutually agreed upon Project costs, upon request by the State, including fixed rates and fixed costs .

g. Be responsible for any contractor claims for extra compensation due to delays or whatever reason, attributable to the City. In addition, be responsible for any and all change orders attributable to the City.

h. Upon completion and acceptance of the Project, provide routine and emergency maintenance of said Project in accordance with JPA 90-019, attached hereto by reference.

i. Upon the approval of the RTPFP by Resolution of the State Transportation Board, on or after July 1, 2011, invoice the State for the actual amount paid by the City for the cost of the Project, currently estimated at \$11,900,000.00.

IV. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in full force and effect until completion of the work contemplated herein and all reimbursements. This Agreement may be cancelled at any time by either party prior to the advertisements for design and environmental consultants, upon 30-days written notice to the other party. Should the City fail to fulfill its obligations set forth in this Agreement or withdraw its proposed plans for whatever reason, the City shall be responsible to the State for all costs incurred up to the time of withdrawal.

2. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to both Parties, who shall be afforded the same rights and interests under this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The Parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State or the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State or the City at the end of the period for which the funds are available. No liability shall accrue to the State or the City in the event this provision is exercised, and the State and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by Arizona Revised Statutes Sections 12-1518, as applicable.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

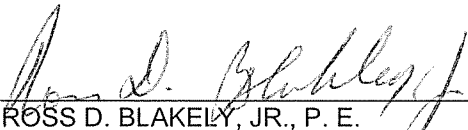
Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, MD 616E
Phoenix, AZ 85007
FAX: 602-712-7424

City of Phoenix
Acting Street Transportation Director
200 W. Washington - 5th floor
Phoenix, AZ 85003-1611
FAX : 602-495-2016

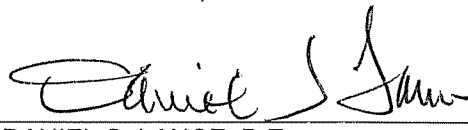
10. In accordance with Arizona Revised Statutes Section 11-952, (D) attached hereto and incorporated herein it the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

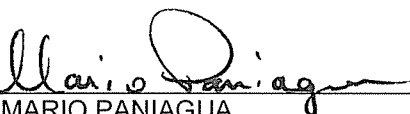
CITY OF PHOENIX, a Municipal
Corporation, Frank Fairbanks, City Manager

By 
ROSS D. BLAKELY, JR., P. E.
Acting Street Transportation Director

STATE OF ARIZONA
Department of Transportation

By 
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST:

By 
MARIO PANIAGUA
City Clerk



G:\05-133-Dixileta T.I.

10-18-06 FINAL Draft 5 w/AG comments ghc

JPA 05-133

Exhibit "A"

ACCELERATED SCHEDULE

Final Design

Completed
(September 20, 2006)

Advertisement Date

October 23, 2006

Award

December 16, 2006

Construction Completion

March 2008

JPA 05-133

Exhibit "B"

CITY ADVANCE

ITEM	COST
Design of the Dixileta Traffic Interchange	\$570,500.00
Rights of Way for the Dixileta Traffic Interchange	\$2,829,500.00
Construction of the Dixileta Traffic Interchange (includes 14% construction engineering administration)	<u>\$8,500,000.00</u>
TOTAL ESTIMATED COSTS	\$11,900,000.00

ATTORNEY APPROVAL FORM

FOR THE CITY OF PHOENIX

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and THE CITY OF PHOENIX, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954, and declare this Agreement to be in proper form and within the powers and authority granted to City of Phoenix under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said Agreement.

Dated _____, 2006

William Bak
Approved as to form
Attorney **ACTING City Attorney**
MB

**CITY OF PHOENIX
REQUEST FOR COUNCIL ACTION**

Complete this form per O.P. 1.906 and A.R. 4.11.
Refer to the City Council Agenda Process Reference Guide for Assistance

ACTION REQUESTED	Formal Action: Bid Award <input type="checkbox"/> License Application <input type="checkbox"/> Public Hearing <input type="checkbox"/> Other <input type="checkbox"/>	OR	Legal Document: Ordinance <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Emergency Clause? <input type="checkbox"/> (for use only w/ord. or res. requests)
IMPACTED DISTRICT(S)	DISTRICT 2	ADDITIONAL BACKUP MATERIAL SENT UNDER SEPARATE COVER?	
SUBJECT	INTERGOVERNMENTAL AGREEMENT WITH ARIZONA DEPARTMENT OF TRANSPORTATION - DIXILETA DRIVE INTERCHANGE		
REQUESTED AGENDA DATE	06/14/2006	PREPARED BY	Name J. Donald Herp Department Street Transportation Phone 262-4872
APPROVALS	Division Head: Department Head:	J. Donald Herp Ross D. Blakley, Jr., P.E.	If prepared for another department: Department Name: Approval:
BID AWARD INFORMATION	Bid Surety Required? <input type="checkbox"/> Submitted by Low Bidder? <input type="checkbox"/> Contract Required? <input type="checkbox"/>	Performance Surety Required <input type="checkbox"/> Amount? Requisition No.	
CONTRACT INFORMATION	Contract Amendment? <input type="checkbox"/> If Yes, Current Contract No. Approved by: Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Formal Action <input type="checkbox"/> on Date:		
BUDGET INFORMATION	\$ 11,900,000 To Be Encumbered? <input checked="" type="checkbox"/> Source of Funds: Fiscal Year? FY 05/06 AHUR Capital Reserve Fund (1393) Fund Center(s) (SAP-FM): ST85100258 Commitment Item(s) (SAP-FM): 510130 Availability of Funds Approval Lauri L. Wingenroth		
CITY MANAGER'S OFFICE	Approved by Thomas E. Callow, P.E. 6/2/06		CM Control No. 34
CITY CLERK DEPARTMENT	Council Action Taken: Adopted Ordinance Number: S-33058 Resolution Number: Comments:		
		RCA No.	52500
		Contract No.	
		Meeting Date	6/14/2006
		Item No.	86

ITEM**DISTRICT 2****INTERGOVERNMENTAL
AGREEMENT WITH ARIZONA
DEPARTMENT OF
TRANSPORTATION – DIXILETA
DRIVE INTERCHANGE**

Request City Council authorization for the City Manager, or his designee, to enter into an Intergovernmental Agreement with the Arizona Department of Transportation (ADOT) for the advance construction of the Dixileta Drive interchange on I-17 and for the City Controller to disburse funds.

The advance construction of this interchange coincides with the construction of the Jomax Road interchange two miles south and will benefit the City by providing convenient freeway access for the City's new solid waste transfer station and water reclamation plant. An additional benefit will be to provide freeway access for large numbers of heavy trucks traveling to and from a large gravel mine east of the North Valley Parkway, minimizing their travel on City streets.

The City will advance the project with Arizona Highway User Revenue (AHUR) Capital Reserve Funds. The City will be reimbursed by regional freeway funds in fiscal year 2011. Regional freeway funds also will be used to reimburse the City one-half of the interest cost for the advancement loan.

ADOT will design, acquire right-of-way and construct the interchange. The anticipated start of construction is fall 2006, with completion anticipated in winter 2007.

Financial Impact

Funding for this agreement is available from AHUR Capital Reserve Fund (1393). The City has applied for and is negotiating terms for a HELP Loan from ADOT. If the HELP Loan becomes available, these funds will be used to reimburse the AHUR Capital Reserve Fund.

Previous Council Action

On May 12, 2004, the Transportation Subcommittee approved the advancement of the Dixileta Drive Interchange. On the May 18, 2004 Consent Agenda, Council approved this interchange.

Citizen Notification

Several public meetings have been held by ADOT to discuss the new interchanges and widening proposed for I-17 in this area. ADOT will also conduct a public meeting during the design phase of the project.

ORDINANCE NO. S-33058

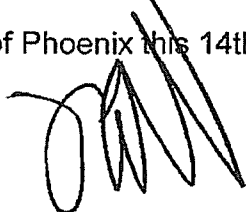
AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO ADVANCE THE DESIGN AND CONSTRUCTION OF THE DIXILETA DRIVE INTERCHANGE AT INTERSTATE 17; AND FURTHER AUTHORIZING THE CITY CONTROLLER TO DISBURSE FUNDS FOR PURPOSES OF THIS ORDINANCE.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:

SECTION 1. The City Manager is authorized to enter into an intergovernmental agreement with the Arizona Department of Transportation to advance the design and construction of the Dixileta Drive interchange at Interstate 17.

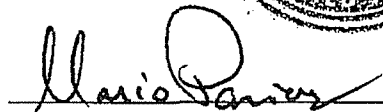
SECTION 2. The City Controller is authorized to disburse the funds in an amount not to exceed ELEVEN MILLION NINE HUNDRED THOUSAND DOLLARS (\$11,900,000.00) for the purposes of this ordinance.

PASSED by the Council of the City of Phoenix this 14th day of June, 2006.



MAYOR

ATTEST:



City Clerk

2006 JUN 12 PM 2:39
CITY CLERK DEPT.

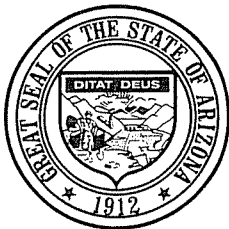
APPROVED AS TO FORM:

William Beck Acting City Attorney
MB

REVIEWED BY:

Frank Milbank City Manager

DLB:tml/CM 34/6-14-06/649816v1



STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION
MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: 602-542-8859
Fax: 602-542-3646


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR05-1300TRN (**JPA05-133**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED November 1st, 2006.

TERRY GODDARD
Attorney General


JEFFREY T. MURRAY
Assistant Attorney General

JTM:dgr
Attachment
#985557